IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6960 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DR BHAVESH M TALSANIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6960 of 2003
   Mr.BP Tanna for TANNA ASSOCIATES for Petitioners.
   Ms. Mita Panchal AGP for Respondent No. 1-2
   Mr. SN Shelat, Advocate General with MS SHRUTI D TRIVEDI, for Respondent No. 3
   MR GM JOSHI for Respondent No. 4-23

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 04/07/2003

CAV JUDGEMENT

The petitioners have filed this petition under Article 226 of the Constitution of India seeking direction against the respondent authorities directing

them to take separate interviews for minor batch of 1996 for seats equivalent to 1/3rd number of seats allotted to major batch of 1996. The petitioners have further sought directions against the respondent authorities to evolve a transparent system of interview where a candidate moves in advance and knows minute by minute the position of vacancies in various subjects. By way of an amendment to the petition, the petitioners have further sought a declaration to the effect that Rules 3.1 and 4.8 of the Rules governing admission to Post Graduate Degree and Diploma Medical Courses framed by the Gujarat University, the respondent No.3 herein, as ultra vires the Article 14 of the Constitution of India.

2. The brief facts, giving rise to the present petition, are that the petitioners are students of old course of MBBS and they have passed their HSC Examination in the month of June 1996. Due to various litigations pending in this Court, in respect of conflict between premedical students and standard 12th students and their respective colleges etc., the petitioners lost one term in the 1st MBBS and as a result thereof the admissions which should have been given in August 1996 were given in the month of November 1996 and the College had started on 6th December 1996. Because of this late admission in the first MBBS the term of first MBBS was not granted by the Gujarat University and their 1st MBBS examination was taken in the month of May 1998, i.e., one month later than the required period of 18 months after taking admission of exams of 1st MBBS. The Second MBBS exams were taken in the month of November 1999, i.e., 2 months later than the required period of 18 months after passing 1st MBBS exams. The 3rd MBBS examination was taken in the month of August 2001, i.e., two months later than the required period of 18 months after passing 2nd MBBS examination. Because of illness and because of several other factors, the petitioners have passed either the first MBBS or 3rd MBBS examination in the 2nd attempt and, thus, the petitioners are known as "Minor Batch" of the year 1996.

3. It is stated in the petition that the delay of around 9 months over the period of around 4 1/2 years study for MBBS Degree Course has resulted in a situation where the petitioners who are of the Minor Batch and whose interviews should have been taken in the month of January/February 2003 were being taken in the month of May 2003. It is further stated that as per the rules governing the admission to Post Graduate Degree and Diploma Medical Courses, selections/interviews would be done once in each academic term. The 1st academic term

would be from 1st May to 31st October and 2nd academic term would be from 1st November to 30th April of the next year. As per the provisions contained in Rule 3.2, the seats should be distributed in the ratio of 3:1 for the 1st and 2nd term respectively. Accordingly, the Minor Batch would be allotted 1/3rd seats in Degree and Diploma Courses as allotted to the Major Batch.

4. It is further stated that the respondent No.3, vide notice dated 4.2.2003, has published the schedule for interviews for admission to Post Graduate Medical Courses. As per the said notice, the merit list was to be published on 15.5.2003 and the last date for any representation against such merit list was on 19.5.2003. It is further stated that after the said notice had been published and since the petitioners had apprehended that the interviews for Post Graduate Medical Courses would be clubbed along with the interviews for the Major Batch of 1997, the petitioners had preferred representation immediately after the publication of the notice, on 1-5-2003 seeking clarification from the authorities regarding interviews to be held. The petitioners have raised the issue in the said representation that the delay because of which their interviews are held in the month of May 2003 was not due to their fault at all and that the students of Major Batch of 1997 have passed their MBBS in the new syllabus which is more scoring and therefore the petitioners sought for clarification from the respondent authorities as to how Post Graduate interviews would be conducted and how the seats would be distributed. The petitioners have also requested to provide their rightful quota of 1/3rd seats allotted to the Major Batch of 1996. The petitioners have not received any reply to their representations.

5. It is further stated that the respondent authorities have published combined merit list for admission to Post Graduate Medical Courses. This combined list includes graduates who belong to the minor batch of 1996 and major batch of 1997. The said merit list prepared in two parts, the first part of students in general category and the 2nd part of students in SEBC/SC/ST category. The said combined merit list has put the petitioners' candidature to a great detriment and a candidate who was No.1 in the merit list of students of Minor Batch of 1996 stood at No. 50 in the combined merit list. It is further stated that the major batch of 1996 of which the petitioners are the minor batch had preferred Special Civil Application No. 362 of 2003, inter alia, praying that the respondent authorities may be directed to take interviews of the petitioners therein

afresh after declaring the adequate number of Degree and Diploma seats in advance. This Court (Coram: A.R. Dave, J.) vide order dated 9.5.2003 has directed the University to grant registration in Post Graduate Diploma Courses to 53 students in order of their merit and the respondent Government authorities shall create the residency in respect of those students in their respective subjects. After the above order was passed by this Court, there would be additional seats in the Post Graduate Courses allotted to the students of the major batch and pro-rata 1/3rd of the same would be allotted to the students of the Minor Batch.

6. It is further stated that the above action of the respondent authorities of clubbing together seats of minor batch of 1996 and major batch of 1997 and preparing a combined merit list and a common interview is absolutely illegal, arbitrary and causes great prejudice to the petitioners. It is in this background of the matter, the present petition is filed before this Court.

7. This Court has issued the notice on 22-5-2003 making it returnable on 26.5.2003 and by way of an ad-interim relief, it was directed that the respondents No.1 and 2 would not arrange the interview in question without prior notice of 24 hours to the petitioners and the permission of the court. The said ad-interim relief was modified on 27.5.2003 on the basis of the statement made by the respondents' advocates that whichever students will be selected and admitted in the PG Degree/Diploma course in view of the interview, would be given provisional admission subject to the result of the present petition and that the University would be taking an undertaking that they would inform accordingly.

8. After service of the notice, the respondents have filed their appearance and an affidavit-in-reply was filed on behalf of the respondent No.3 on or around 2nd June 2003. The petitioners have filed their rejoinder to the said affidavit-in-reply on or around 5th June 2003. Thereafter an affidavit-in-reply was filed on behalf of respondents No. 1 and 2 on or around 5th June 2003. An application for amendment was moved on 19.6.2003 and after the grant of the amendment, an affidavit-in-reply was filed to the amended petition on 25th June 2003. A rejoinder to the said affidavit-in-reply was also filed by the petitioners on 26th June 2003 and since the pleading is almost complete, at the joint request of the parties, the petition is taken up for final hearing.

9. Mr. BP Tanna, the learned Senior Advocate

appearing for the petitioners submitted that the petitioners were pushed back by around 9 months because of the circumstances beyond their control and if the examination would have been held as per the schedule the said situation would not have arisen at all and since the said delay can, in no way, be attributed to the present petitioners, the respondent authorities should be directed to take interview separately in the minor batch of 1996 and major batch of 1997. He has further submitted that the students/candidates of the minor batch of 1996 are in no way inferior to the students of major batch of 1997 but due to the changed syllabus of MBBS of which the major batch of 1997 was the first batch, the students/candidates of the major batch of 1997 are in advantageous position. He has further submitted that the students of the new MBBS course have in their examination more objective type of questions and therefore it results in more scoring marks. He has further submitted that because of this, the students/candidates who are higher in the merit list of minor batch of 1996 find themselves pushed down to a great extent in the combined merit list. Even on this ground also, their demand for separate interviews for minor batch of 1996 and major batch of 1997 is justified. Mr. Tanna has further submitted that the petitioners' only claim is that they may be given 1/3rd seats in Degree as well as Diploma in medical courses of the total number of Degree/Diploma seats given to the Major Batch of 1996. He has further submitted that the Major Batch of 1997 would not be prejudiced at all by this separation of interview as they have no claim over these seats and therefore by taking separate interviews they would not be prejudiced at all whereas by taking combined interviews the petitioners would be definitely at a disadvantageous position.

10. Mr. SN Shelat, the learned Advocate General appearing for the respondent No.3 University submitted that the admissions to the Post Graduate studies for Faculty of Medicine of Gujarat University are regulated by the rules framed by the Gujarat University. He has further submitted that majority of the students whose cause is being espoused by the petitioners are repeaters and as a result of it they are shown lower in merit list. If the petitioners do not come on merits, they are not entitled to admission in respect of the discipline sought for. He has further submitted that under Rule 3.2 seats are to be distributed in the ratio of 3:1 for the 1st and 2nd academic term. All those candidates who are eligible in accordance with the Rule 1.3 are entitled to seek admission on the basis of their merits and the merit list is determined in accordance with Rule 4 and Rule 7. He

has further submitted that all those students who have passed their Final MBBS examination or its equivalent qualifying examination are eligible for consideration and preference is given to those students who have completed internship to candidates of more than one year standing after completion of internship or housemanship graduating from Gujarat University. The important requirement is that the candidates must have passed Final MBBS Examination. He has further submitted that it is wholly irrelevant for grant of admission to Post Graduate Courses as to in which year a candidate has been admitted to MBBS Course. The Rules do not contemplate such classification as alleged by the petitioners. He has further submitted that the courses of studies and curriculum are framed by the Gujarat University in accordance with the regulations of the Medical Council of India and the Medical Council of India has framed uniform curriculum and syllabus of all recognised Universities within the country and therefore, there is uniform pattern of subjects being taught in accordance with the Medical Council of India. He has further submitted that the petitioners have undergone the same studies of the subjects as other students who are more meritorious than the petitioners. He has further submitted that for the students commencing their studies prior to August 1997 the duration of the studies is the same i.e. 4 1/2 years divided into 1 and 1/2 year each for First MBBS, Second MBBS and Final MBBS examinations. The course of studies and duration of studies will not differ. It is, therefore, not correct to state that the students passing the examinations have not undertaken the same studies and that the assessments of students are different. He has further submitted that there is no difference at all between the candidates seeking admission for the batch of 1996 and of 1997 and hence it is not correct to state that equals are treated unequally. He has emphatically stated that as per prevalent rules there is no classification like minor batch or major batch. He has also stated that rules even do not provide for allotment of 1/3rd of seats for any particular batch. He has further submitted that the plain reading of Rule 3.2 undisputably suggests that the total number of seats available are distributed in the ratio of 3:1 for which the admissions would be given in the month of May and November respectively by preparing separate merit list and separate notification would be issued for the same.

11. Mr. Shelat has further submitted that the candidates appearing for the interview for admission to P.G. Medical Courses are informed well in advance about the total number of seats available in different branches

and different colleges. Even at the time of interview, an announcement is made on microphone so that the students can know which subjects are filled in and which subjects are still open. He has further submitted that the process of admission to P.G. Diploma and Degree Course is just, legal and proper and in accordance with the rules framed by the University with the sanction of the State of Gujarat.

12. Mr. GM Joshi, the learned advocate appearing for the newly added parties submitted that there is no process of earmarking the seats for any particular batch as contended by the petitioners. He has further submitted that available seats are declared without any classification like the major batch or the minor batch. He has further submitted that the petitioners are those who have failed either in the 1st, 2nd, or 3rd MBBS examination at least once and their each such failure entails deduction of 1.5% marks per attempt. Such students have therefore to compete with the regular students with the attached handicap. If the demand of the petitioners are accepted, they would indirectly be successful in doing away with the deduction of 1.5% of marks.

13. During the course of hearing of this petition, Mr. BP Tanna, learned Senior Advocate appearing for the petitioner seeks permission to amend the petition by way of challenging Rule 3.1 and 4.8 of the Rules governing admission to P.G. Diploma and Degree in Medical Course by the Gujarat University, and accordingly an application for amendment was granted by this Court, on 18.6.2003 and Paras 3.8 A to Para 3.8 C were added to the petition. A new prayer, namely Prayer 8 (d)(1) was also added to the prayer clause whereby a declaration is sought for to the effect that Rules 3.1 and 4.8 of the Rules governing admission to P.G. Degree and Diploma Medical Course framed by Gujarat University, are ultra vires the Article 14 of the Constitution of India.

14. Mr. Tanna has submitted that the case presented by the University before this Court leads to a situation that 75% of 75 per cent seats was granted to the students of major batch of MBBS of June 1996 in the month of November 2002 and as the remaining 25% of 75% could not be granted to the repeaters or to the minor batch of June 1996 before 30th April 2003, then it automatically lapsed in view of Rule 4.8 coming into operation. Mr. Tanna has further submitted that the State Government and the University cannot be heard to contend this, and even if they contend because of the inbuilt rigidity of Rules 3.1

and 4.8, both these rules deserve to be stuck down by the court. He has further submitted that the delay is not attributable, either fully or partly, to the petitioners and it was only because of the delay on the part of the respondent authorities. They are therefore not permitted to take advantage of their own wrong. He has further submitted that delay had occurred due to certain litigations pending before this Court where the petitioners were not parties. The petitioners cannot, therefore be, made sufferers because of the delay committed by others.

15. Alternatively, it is submitted that Rules 3.1 and 4.8 can be read harmoniously and the principles of beneficial construction may be put into operation while understanding the intent of the Legislature to frame such rules. Mr.Tanna has further submitted that in case of certain anomalies which cannot be attributed to the petitioners, Rule 3.1 should be read to mean that an academic year of 12 calendar months which consists of two terms each one of which is of 6 months and the first term starting from the date when the interviews of candidates who have passed MBBS in first attempt and who were granted 75% of 75 per cent seats are over and they actually start their P.G. course and the 2nd academic term to start 6 months thereafter and the 6 months period would be counted from the date of starting of 2nd academic term.

16. In support of his contentions, Mr. Tanna has relied on several authorities which are on the subject of act of Court, doctrine of impossibility, advantage of own wrong, harmonious construction and Rules being mandatory/directory. For an act of Court, the petitioners should not be put into any disadvantageous position. Mr. Tanna relies on the judgment of the Hon'ble Supreme Court in the case of Rajkumar Dey and others v. Tarapada Dey and others - AIR 1987 S.C. 2195, wherein it is held as under :

> "As the arbitrators could not take back the award from the custody of the court to take any further steps for its registration the entire period during which award remained in custody of Court should be excluded and it could not be said that they failed to get the award registered as the law required i.e. within period of four months. The two legal maxims that the law does not compel a man to do that which he cannot possibly perform and an act of the Court shall prejudice no man would apply with full vigour in

the facts of the case and that being the position the award would be taken to be presented before the Sub-Registrar, on 25th November, 1983, the very next day of getting possession of the award from the court."

In Atma Ram Mittal Vs. Ishwar Singh Punia - (1988) 4 SCC 284, it is held that "It is well settled that no man should suffer because of the fault of the court or delay in the procedure : "actus curiae neminem gravabit" - an act of court shall prejudice no man. " It is further held that "Purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else. While ascertaining the legislative intent the court should look to the true meaning of the words that the legislature has used."

17. In the case of Mohammed Gazi v. State of M.P. and others - AIR 2000 S.C. 1806, it is held :

"In the facts and circumstances of the case, the maxim of equity, namely, actus curiae neminem gravabit an act of the Court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, lex non cogit ad impossibilia - the law does not compel a man to do which he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities and the administration of law must adopt that general exception in the consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in Raj Kumar Dey v. Tarapada Dey (1987) 4 SCC 398 : (AIR 1987 SC 2195) and Gursharan Singh v. NDMC, (1996) 2 SCC 459 : (1996 AIR SCW 749 : AIR 1996 SC 1175)."

18. On the issue of Doctrine of Impossibility, Mr. Tanna has relied on the decision of the Hon'ble Supreme Court in the case of The Cochin State Power and Light Corporation Ltd. v. The State of Kerala - AIR 1965 SC 1688, wherein it is held that, "The performance of this impossible duty must be excused in accordance with the maxim, lex non cogit ad impossibilia (the law does not compel the doing of impossibilities), and sub-s. (1) of S. 6 must be construed as not being applicable to a case

where compliance with it is impossible." In the case of Priyanka Overseas Pvt. Ltd. And Another vs. Union of India and Others - 1991 Supp. (1) SCC 102, it is held that :

> "After determining the rate of duty on the basis of the date on which the goods were actually removed from the warehouse the question would be examined as to how the relief is to be moulded in case it is found that the customs authorities were themselves responsible in preventing the importer of goods from actually removing the goods from the warehouse. If a party discharges its liability by complying with the requirement of law, and presents papers for clearance of goods, it is obligatory on the revenue authorities to pass the order immediately thereon. If the revenue authorities either refuse to pass the order on some erroneous or imaginary ground or on account of any misconception of law, the department cannot take advantage of its own wrong in demanding higher rate of duty from the importer. Section 68(c) prescribes an official function which if not performed by the customs authorities due to entertainment of a wrong and illegal notion would result into a wrong order by the department. In the circumstances the department cannot be allowed to take advantage of its own wrongful and illegal act. In moulding relief, the Supreme Court has always applied principles of equity in order to do complete justice between the parties."

In the case of Ashok Kapil vs. Sana Ullah (Dead) And Others - (1996) 6 SCC 342, the Apex Court has held, "Such a liberal interpretation can be afforded to prevent a wrongdoer from taking advantage of his own wrong. The maxim : "Nullus commodum capere potest de injuria sua propria" (No man can take advantage of his own wrong) is one of the salient tenets of equity. Hence, in the normal course, the respondent cannot secure the assistance of a court of law for enjoying the fruit of his own wrong." In the case of Union of India And Another v. Ashok KUmar Mitra - (1995) 2 SCC 768, it is held that "The respondent, having himself contributed to the delay in the disposal of the trial, in no small measure, cannot be permitted to take advantage of his own wrong and take shelter under "speedy trial" to escape from prosecution."

19. On the issue of "harmonious construction", Mr.

Tanna has relied on the decision of the Hon'ble Supreme Court in the case of M/s. British Airways Plc. v. Union of India and Others - AIR 2002 SC 391, wherein it is held :

> "While interpreting a statute the Court should try to sustain its validity and give such meaning to the provisions which advance the object sought to be achieved by the enactment. The Court cannot approach the enactment with a view to pick holes or to search for defects of drafting which make its working impossible. It is a cardinal principle of construction of a statute that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a harmonious construction should be given. The well-known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the Court to make such construction of a statute which shall suppress the mischief and advance the remedy. While interpreting a statute the Courts are required to keep in mind the consequences which are likely to flow upon the intended interpretation."

In the case of Anwar Hasan Khan vs. Mohd. Shafi And Others - (2001) 8 SCC 540, the Apex Court has held :

> "For interpreting a particular provision of an Act, the import and effect of the meaning of the words and phrases used in the statute have to be gathered from the text, the nature of the subject-matter and the purpose and intention of the statute. It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved. The well-known principle of harmonious construction is that effect should be given to all the provisions and a construction

that reduces one of the provisions to a "dead letter" is not harmonious construction."

In East India Hotels Ltd. And Another vs. Union of India And Another - (2001) 1 SCC 284, it is held that "An Act has to be read as a whole, the different provisions have to be harmonised and the effect has to be given to all of them. Reading the said provisions together, it is clear that food and drink would fall within the definition of "goods" under Section 2(g). There would be a transfer of property in the same by a hotelier in favour of the customer. Section 2(l) clearly provides that sale would mean any transfer of property in goods by one person to another."

20. In Ahmedabad Municipal Corporation And Another vs. Nilaybhai R. Thakore And Another - (1999) 8 SCC 139, the Supreme Court has held that as under :

"It is not the jurisdiction of the court to enter into the arena of the legislative prerogative of enacting laws. However, keeping in mind the fact that the rule in question is only a subordinate legislation and by declaring the rule ultra vires, as has been done by the High Court, the Court would be only causing considerable damage to the cause for which the Municipality had enacted this rule and following the rule of interpretation laid down by Lord Denning in Seaford Court Estates Ltd. case and with a view to iron out the creases in the impugned rule which offends Article 14 Rule 7 has to be interpreted as follows :

"Local student means a student who has passed HSC (sic SSC)/New SSC Examination and the qualifying examination from any of the high schools or colleges situated within the Ahmedabad Municipal Corporation limits and includes a permanent resident student of the Ahmedabad Municipality who acquires the above qualifications from any of the high schools or colleges situated within the Ahmedabad Urban Development Area."

The validity of Rule 6 is upheld as it stands and the validity of Rule 7 is upheld as interpreted."

On the issue of "mandatory" and "directory", Mr. Tanna has relied on the decision of the Supreme Court in the matter of Special Reference No.1 of 2002 (Gujarat Assembly Election Matter), reported in (2002) 8 SCC 237, the Supreme Court has held as under :

> "Six months' period applicable to elections held on expiry of the prescribed term would be imperatively applicable to elections held after premature dissolution. This of course would be subject to such rare and exceptional cases occasioned on account of facts situation (like acts of God) which make holding of elections impossible. The impossibility of holding the election is not a factor against the Election Commission. The maxim of law impotentia excusat legem is intimately connected with another maxim of law lex non cogit ad impossibilia. Impotentia excusat legem is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform. Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance with the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. But man-made situation intended to defer holding of elections should be sternly dealt with and should not normally be a ground for deferring elections beyond six months' period, the starting point of which would be the date of dissolution. The requirement of summoning the House has inbuilt in it the existence of a House capable of being summoned. Therefore even in the case of premature dissolution, effort of the Election Commission should be to hold elections in time so that a responsible government is in office. Where free and fair election is not possible to be held, there may be inevitable delay. But reasons for deferring elections should be relatable to acts of God and normally not acts of man. Myriad reasons may be there for not holding elections."

In the case of Administrator, Municipal Committee Charkhi Dadri And Another - (1995) 5 SCC 272, the Supreme Court has held that, "One of the well-accepted tests for determining whether a provision is directory or mandatory is to see whether the enactment provides for the consequence flowing from non-compliance with the requirement prescribed."

21. With regard to the challenge to Rules 3.1 and 4.8 of the Rules made by the petitioners by way of an amendment, it is submitted by Mr. SN Shelat, the learned Advocate General, that these Rules are not prejudicially affecting the petitioners. As per Rule 3.1, the petitioners have applied for admission to the test for the academic term commencing from 1st May 2003. When the academic year is to be commenced is a matter to be decided by the University and the decision that admission should be given twice a year on the basis of the merits and on the basis of eligibility criteria laid down thereunder and giving admission twice a year is a policy decision. The University is competent to frame rules and the rules operate uniformly and there is no discrimination to the students who apply for admission. He has further submitted that the rule works beneficially in favour of the petitioners and the same are not arbitrary or illegal and hence there is no question of striking down the said rule. He has further submitted that the constitutional validity of the rules is upheld by this Court. Even with regard to Rule 4.8, it is submitted that it does not prejudicially affect the students. Under this Rule, even vacancies fallen during one academic term can be utilized for the subsequent term during the same year. Previously, the rule did not permit the vacancies in the first term being utilised for the subsequent term in the same academic year. He has further submitted that the rules as framed do not provide for linkage with the delay of 1st, 2nd and 3rd MBBS examinations. Delay of holding examinations of 1st, 2nd and 3rd MBBS is of no relevance so far as the admission to the Post Graduate courses is concerned. Rules as framed only provide for admission to those students who are eligible under the said rules on the day when the admission reopens. The students who are desirous of applying to Post Graduate course in the respondent University must have completed their internship under Rule 1.3. As far as the petitioners are concerned, Rule 4.1. would be operative since the petitioners are not the students of more than one year standing after completion of internship. The merits of the petitioners would be determined in accordance with Rule 7.1. It is further submitted that the petitioners are repeaters and

have not passed their examination regularly and therefore the petitioners may not be able to compete with meritorious students. If the petitioners' demand is accepted, the same would be violative of Article 14 as well as violative of merit criteria and hence the interpretation of the rules put-forward by the petitioners is not sustainable nor the rules are held to be ultra vires.

22. In support of his submission, Mr. Shelat has relied on the Division Bench Judgment of this Court in the case of Gujarat University v. Samir Uppal & Others 37 (3) GLR 185, wherein the decision of University to bifurcate seats of Master of Dental Surgery Course by providing admission twice a year instead of once a year was held to be not ultra vires the Article 14 of the Constitution of India. The Court has found the said decision as a policy decision in academic matters taken with a view to extend the benefit to the students community in larger public interest and in that context the Court has held as under:

> "It is settled law that a Court of law cannot interfere or adjudicate upon policy matters. Such matters are normally not subject to judicial review under Art. 226 of the Constitution. The Court cannot strike down a policy decision taken by an authority merely because it feels that another policy decision would have been better,fairer, wiser or more logical. The Apex Court in a number of decisions has held that policy questions depend upon various factors and a Court of law is not expected to sit in judgment over the wisdom of policy makers and to substitute its own wisdom or prudence for that of policy makers.
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> The rules framed by the University cannot be held ultra vires or unconstitutional. The Court is also of the opinion that the rule providing admission twice a year is in the nature of policy decision and that too in the field of education. Such action, though subject to judicial review under Art. 226 of the Constitution of India, should not be lightly interfered with unless the Court is satisfied that the action is de hors the Act or is arbitrary or unreasonable or otherwise unlawful."

23. Reliance is also placed on the decision of this Court in the case of Hemant L. Leuva vs. H.S. Shah, Chairman, Admission Committee & Dean and Others - 1997 (1) GLH 83, wherein it is held as under :

> "It is well settled that, the High Court, cannot in the exercise of its jurisdiction under Art. 226 of the Constitution (a) relax rules governing admission to educational institutions or rewrite them, (b) devise a scheme of its own relating to admission, in place of that made by statutory authority, (c) direct the educational institution to admit a particular candidate to a course contrary to rules. IN matters relating to internal working of an educational institution and more particularly, in the matter of admissions, the Court will not interfere unless the act complained of is clearly beyond jurisdiction or contrary to the statutes, rules or regulations governing the institution, or there is a statutory duty which the authority has failed to perform or the impugned act is mala fide or arbitrary. It is not established that the act of the respondents in not admitting the petitioner to M.S. (Ortho) Discipline is beyond jurisdiction or contrary to statutes and/or regulations of unreasonable..."

24. Reliance is also placed on the decision of this Court in the case of Gadani Samir D. and Others v. Gujarat University and Others - AIR 1997 Gujarat 79, wherein it is held as under :

> "The requirement as provided under Rule 1.1.(c) that the student while doing his Post Graduate studies should be a resident of the campus, is a rational requirement having nexus with the object of providing higher education in the field of medical science. Therefore, the requirement in Rule 1.1. (c) that no student will be eligible for admission to Post Graduate Courses in the Clinical subjects unless he has been granted Residency in the subject cannot be said to be unjust or arbitrary. The requirement is clearly intended to bring about higher standards of efficiency in the candidates admitted to the Post Graduate Course, who by virtue of their residing in the campus, would be exposed to more intensive and continuous

training. Therefore, the impugned Rule 1.1.(c) cannot be said to be arbitrary or violative of Article 14 of the Constitution."

25. On the basis of the above factual background, the provisions contained in the Rules and the judicial pronouncements, Mr. Shelat has submitted that the Rules being just, valid and proper, and they being beneficial in nature, there is no justification in challenging the said rules on the ground that the same are violative of Article 14 of the Constitution of India. The interpretation sought to be put-forward by the petitioners is also not justified as it leads to an anamolous situation and it would result into injustice being caused to the meritorious students. He has, therefore, submitted that the Rules are neither required to be struck down nor they are to be interpreted in the manner suggested by the petitioners. The whole basis of the arguments submitted by the petitioners is erroneous. There is no justification on contending that there is flexibility in Rule 3.1., whereas there is rigidity in Rule 4.8. There is also no merit in saying that if the term can be extended for the purpose of Rule 3.1. in the same manner the term prescribed in Rule 4.8 can also be extended. However, there is no force in this argument and the same cannot and should not be accepted by the Court.

26. Before considering the rival submissions, it is necessary to have a close look at the relevant rules governing the admission to Post Graduate degree and diploma medical courses. Rule-1 lays down the eligibility criteria for admission to Post Graduate Medical Courses. Rule 1.1.(d) postulates that a person who is seeking admission in Post Graduate Medical Courses must have been conferred Residency in the subject for which such admission is sought for. Rule 1.3 further stipulates that the candidates must have completed the internship (Compulsory Housemanship) before starting of the course as decided by the University. It further requires the candidate to complete nine months internship on the last day of submission of application.

27. Rule 3 deals with filling up of 75% or more of total seats in Post Graduate Courses by the "Admission Committee" of the University. Rule 3.1 says that selection will be done in each academic term and there are two academic terms in a year. The first term starts from 1st May to 31st October and Second term starts from 1st November to 30th April of the next year. Rule 3.2 specifically prescribes that seats allotted under Rule

3.0 will be distributed in the ratio of 3:1 for First and Second Academic term respectively. Rule-4 says that selection of candidates eligible under Rule-1 for seats under Rule 3.0 would be category wise and on the basis of merits. Rule 4.1 talks of the First Preference in the admission. As per the said Rule, preference shall be given to candidates of not more than 1 year standing after completion of internship graduating from this University. Rule 4.8 deals with utilisation of seats, according to which, seats can be utilised in the same academic year and vacancy in any one academic term can be utilised any time in subsequent term of the same academic year only.

28. Rule 7 deals with determination of Merit Order. It says that separate merit lists for each status/category shall be prepared. Rule 7.1 talks about preparation of merit list and as per Rule 7.1(v) the percentage should be modified by deduction of 1.5% for each unsuccessful trial in the concerned examination and such unsuccessful trial includes the number of terms he has lost after he has become due, irrespective of his appearance, provided that the non-appearance is not as a result of reasons beyond his control. Rule 7.3 talks of notification of merit list and candidates under Rule 4.1 belonging to open merit list find their place in merit list 1.1. Rule 7.5 discusses about the objection to be raised against merit list before the Admission Committee, within 72 hours of publication of merit list. The Committee decides this objection after giving reasons and a candidate, being aggrieved by or dissatisfied with such decision, can make written appeal to the Vice-Chancellor, whose decision shall be final.

29. The gist of the above rules shows that the Rules are self-contained Code and regulate the admission procedure for Post Graduate Medical Course. Mr.Tanna's argument is that the combined reading of Rules 3.1 and 3.2 clearly brings out the underlying object of allocation of seats amongst freshers and repeaters or major batch and minor batch. 75% of 75 per cent of total seats are allocated to fresh batch or major batch, commencing from 1st May to 31st October and 25% of 75% of total seats are allocated to repeaters batch or minor batch commencing from 1st November to 30th April of the next year. Rules never contemplate the clubbing or putting together the major batch and minor batch and any such attempt would frustrate the whole object as the minor or repeaters batch of earlier year would hardly compete with the fresh batch of the subsequent year and that too, while preparing merit list 1.1 under Rule 7.3,

preference is given to the candidates under Rule 4.1 belonging to open merit list. Mr. Tanna has further questioned the validity of merit list on the ground that delay in clearing examinations of 1st, 2nd and 3rd MBBS within specified period is not attributable to the petitioners falling in minor batch of 1996 and hence they are entitled to be separately considered for 25% of 75% of total seats. He has further raised a question as to where these 25% of 75% of total seats have gone. It is nowhere mentioned either in affidavit-in-reply or in oral submissions that these seats are either lapsed or consumed or carried forward. Thus, on the basis of doctrine of impossibility or because of the act of Court or due to wrong committed by the respondents, the petitioners should not be made sufferers and Rules being directory in nature should harmoniously be construed by this Court. The harmonious construction of Rule 3.1 and 4.8 put forward by Mr. Tanna is that Rule 3.1 should be read to mean that an academic year would be of 12 calendar months which would consist of two terms, each term of six months and the first term starting from the date when the interviews of candidates who have passed MBBS in first attempt and who are granted 75% of 75 per cent seats are over and they actually start their Post Graduate Course and the 2nd academic term to start six months thereafter and six months from the date of starting of 2nd academic term. Mr. Tanna has no grievance against Rule 4.8, if Rule 3.1 is to be read in this manner. Any other interpretation of these two rules would render the whole object nugatory.

30. There is basic flaw in Mr. Tanna's arguments. They are not merely presumptuous, but erroneous too. He has entirely based his case on an erroneous premises. There is no major or minor batch of 1996. HSC Examination of 1996 has nothing to do with the admission to Post Graduate Medical Course either in 2002 or 2003. The Rule envisages two terms in an academic year. First Term starts from 1st May to 31st October and Second Term starts from 1st November to 30th April of the next year. The condition precedent for seeking admission to Post Graduate Medical Course is that the candidate must have completed nine months after his internship, on the last date of making application, whether a candidate is a fresher or repeater does not make any difference as the rule does not bring out any such distinction. Since the petitioners have completed nine months after their internship on the last date of their application, they have to compete all those candidates who have completed nine months after their internship, may be freshers or repeaters. There is no question of treating equals

unequally. There is also no much substance or merit in the submission that Rule 3.1 is flexible whereas Rule 4.8 is very rigid. Both the Rules talk of two terms in an academic year and specify their respective period. The interpretation put forward by Mr. Tanna of Rule 3.1 seems to be rather imaginary and it leads to many complications and uncertainties. Rules cannot be held to be ultra vires, simply because, while in operation, they would not favour some one. One should not add to or read something in the rule or enlarge its scope only with a view to subserve one's own purpose. If rule does not contemplate a particular situation or there is no legislative intent, which can be gathered either on the plain reading of the rule or even on remotely drawing inference therefrom, such a rule or an action based thereon, cannot be struck down on the ground that it is illegal, discriminatory or violative of Article 14 of the Constitution of India.

31. Another argument, though interesting however not convincing, canvassed by Mr. Tanna is that the delay is not attributable to the petitioners. The fact, however, remains that out of delay of nine months over the period of 4 1/2 years, as calculated by the petitioners, six months delay is due to the failure of the petitioners either in one or another examination. The alleged delay of remaining three months can hardly be attributed to the respondent authorities. They have not derived any advantage because of such delay. There is no dispute at all about the propositions laid down by the Courts in the various judgments relied upon by Mr.Tanna and referred to in earlier part of this Judgment. However, they are not of much relevance or importance looking to the facts and circumstances of the petitioners' case. Questions posed by Mr. Tanna with regard to 25% of 75% of total seats, do not assume much significance as one is mainly concerned with the fact that at the time of commencement of term, who is eligible to get admission as per merit criteria laid down under Rule, whether a candidate is a fresher or repeater, is neither here nor there. If admission is sought for in the first term of the academic year, commencing from 1st May to 31st October, 75% of the 75% of total seats are to be filled up from amongst the candidates eligible on merits. These 75% candidates may be freshers or repeaters depending upon the fulfillment of other criteria laid down in the Rules. Likewise, if admission is sought for in the second term, commencing from 1st November to 30th April of next year, 25% of 75% of the total seats plus left over seats of the first term are to be filled up from amongst the eligible candidates on merits, may be freshers or repeaters. This appears to

be the legislative intent and this also appears to be the just, appropriate and harmonious construction of the Rules.

32. Mr. Tanna has placed too much reliance on the decision of this Court rendered on 9.5.2003 in MCA No. 1099 of 2003 in SCA No. 362 of 2003, which is mainly based on the statement made by the learned AGP that if the respondent University is ready and willing to give registration to Post Graduate Diploma Courses in pursuance of order passed by this Court on 25th March 2003, the respondent authorities have no objection to grant residency to the said students in order of their merits. Based on this statement, this Court has directed in the said order that the respondent authorities shall grant registration to Post Graduate Diploma Courses to 53 students in order of their merits and the respondent authoriteis shall create the residency in respect of those students in their respective subjects. Mr. Shelat has also made the similar statement and assured the petitioners that if they get the admission to Post Graduate Medical Courses in order of their merits, the respondent authorities shall create the residency in their favour in their respective subjects.

33. The issues raised in the present petition can be considered from another point of view. In view of Rule 3.1, r.w. Rule 4.8, can it be said that the petitioners shall have any right to claim their separate merit list qua 25% of 75% of total seats are concerned. If Rules do not provide for such right, can the Court interprete the Rules in such manner ? In some what similar circumstances, a question arose before the Hon'ble Supreme Court whether in terms of Rule-10 of the Rules there is a right in admission to a seat in the P.G. Course in MD/MS falling vacant in a Medical College in the midst of or "towards the end of an academic year to which it pertains. The whole controversy turns on the purport and effect of Rule 10 of the Rules prescribing the manner in which seats available in any particular course are to be filled up. The Hon'ble Supreme Court has observed in Dr. Ajay Pradhan v. State of Madhya Pradesh and others- AIR 1988 SC 1875 as under:

> "A rule must be interpreted by the written text. If the precise words used are plain and unambiguous, the court is bound to construe them in their ordinary sense and give them full effect. The plea of inconvenience and hardship is a dangerous one and is only

admissible in construction where the meaning of the statute is obscure and there are alternative methods of construction. Where the language is explicit its consequences are for Parliament, and not for the Courts, to consider."

34. This Court had an occasion to deal with Rules for preparation of merit list for admission to Post Graduate Medical Course in the case of Prashant Pravinbhai Kanabar v. Gujarat University & Anr. - (1990) 31 (2) GLR 1066, wherein Rules 5 & 11 were held to be not ultra vires the Articles 14 & 16 of the Constitution of India. This Court has held as under :

"It has always been the approach of the Courts in such academic matters not to substitute their own opinion or views for the opinion or views expressed by expert bodies consisting of experienced teachers and academecians. Decisions taken by Academic Bodies in such matters are in the nature of policy decisions, and it would not be proper for the Courts to interfere with such policy decisions, unless they are found to be unreasonable or arbitrary. There can be two opinions with respect to such policy decisions, but the Court cannot strike down such decisions because the other view appears to it to be better or more desirable. Nor can such decisions be invalidated on the ground of arbitrariness or unreasonableness merely because they are likely to cause hardship to some individuals. Therefore, while judging the validity of Rules 5.1, 5.2 and 11, what we will have to consider is whether the method adopted by the University for judging suitability of a candidate for post-graduate study is rational or not, and whether it has a reasonable nexus with the object sought to be achieved. The object sought to be achieved by the Rules is obviously to secure admission to post-graduate courses to best talents. For judging merit of the student his performance at the examination is generally regarded as a sound test. If for judging his merit the University decides to take into consideration his performance at all the examinations at under-graduate level, instead of considering his performance at the last examination, which would qualify him for post-graduate studies it cannot be said that adoption of such an eligibility criterion is arbitrary or unreasonable. Whether eligibility

> criteria should be broad-based or not is really for the University to decide, and it would not be proper for the Court to substitute its own views for the criteria fixed by the University."

While dealing with old Rule 2.0, the Court has held that the vacancies arising in an academic term has to be utilised in the same academic term and it would be inconsistent with the rules of the Medical Council of India if the vacancies are to be carried forward for the next academic term. The determination of the vacancy is on the basis of the student-teacher ratio and it would upset the said ratio if the vacancies are carried forward for the next academic term.

35. In the light of the aforesaid discussion and the authorities referred to hereinabove, this Court is of the view that the petitioners are not entitled to the relief claimed by them in the petition. Rule 3.1 and 4.8 are not ultra vires Article 14 of the Constitution of India and hence they are not required to be struck down. These two rules, sought to be interpreted by Mr. Tanna in a manner suggested in the petition or in course of arguments, which is not found favour with the Court as they are being harmoniously construed by the respondents and hence it requires no interference. The prayer, that their interviews should be held separately, considering the students of Minor Batch of 1996, or that they should be permitted to compete with the Minor Batch or the Repeaters Batch, can be examined even when the admission procedure to Post Graduate Medical Course would be held in November 2003, if one year would not be over by that time. Subject to this, the petition is dismissed. Notice is discharged with no order as to costs. Interim relief granted earlier stands vacated.

rmr. [K.A. Puj, J.]